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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IN RE COLLEGE ATHLETE NIL
LITIGATION

Case No. 4:20-cv-03919 CW

**PLAINTIFFS' RESPONSE TO
DEFENDANTS' MOTION FOR LEAVE
TO SUBMIT ADDITIONAL
AUTHORITY IN SUPPORT OF
OPPOSITION TO CLASS
CERTIFICATION**

Date: Sept. 21, 2023
Time: 2:30 p.m.
Judge: Hon. Claudia Wilken
Courtroom: Via Zoom Video Conference

Defendants' Motion to Submit Additional Authority,¹ filed less than two days prior to the class certification hearing, is untimely in several respects.² Nonetheless, while Defendants correctly state that "Plaintiffs do not join this motion," they leave out that when Defendants on Monday (September 18) identified the 45 pages of excerpts from Dr. Rascher's September 1st supplemental deposition that they wanted to make part of the record before tomorrow's hearing, Plaintiffs said that they would join the request as long as it was to make the entire transcript part of the record. Plaintiffs also requested that, in accordance with Local Rule 7-11, they be given the four days prescribed by the rule to respond to the Motion, which would, *inter alia*, allow Plaintiffs to identify additional excerpts from Dr. Rascher's deposition if that were helpful to the Court. Defendants refused each aspect of this compromise offer.

If the Court orders that Dr. Rascher's deposition transcript become part of the record before the class certification hearing, Plaintiffs submit that their proposed compromise solution is the fairest one. Defendants have identified excerpts from 45 of the deposition transcript's 141 pages (almost one-third of the pages) that they want to make part of the record. If the Court allows this submission, Plaintiffs should be entitled to cite those and other pages of the entire transcript, which puts the excerpts identified by Defendants in proper context. And given the percentage of the transcript's pages identified by Defendants, it would likely be less burdensome for the Court to consider the entire transcript, rather than just the large but selective tranche identified by Defendants. Finally, given Defendants' untimely Motion, to minimize the prejudice to Plaintiffs on the eve of the hearing,

¹ See Defs.' Mot. for Leave to Submit Additional Authority in Supp. of Defs.' Opp'n to Class Certification ("Motion"), filed Sept. 19, 2023, ECF No. 320.

² To begin with, Defendants' request is untimely because it was not filed in time to give Plaintiffs four days prior to Thursday's hearing to respond to the Motion, which we are afforded under Civil Local Rule 7-11. While not styled as an administrative motion, there is no time limit prescribed in the local rules for responses to motions to submit additional authority (and Defendants cite no local rule, federal rule or statute, or standing order of this Court in their Motion), and thus under Local Rule 7-11, Plaintiffs should have been provided four days to respond. See N.D. Cal. Civil L.R. 7-11(b). For the purposes of the rule, four days from the filing of yesterday's Motion is Monday, September 25. Moreover, Dr. Rascher's deposition was more than two weeks ago on September 1, and it was inexcusable for Defendants to wait to make their request until now, especially given the emphasis on limited and timely post-deposition submissions in the Court's order permitting the supplemental deposition. See ECF No. 308.

Plaintiffs submit that, in accordance with Local Rule 7-11, they should be given until Monday, September 25 to respond to the Motion to, *inter alia*, identify additional excerpts from Dr. Rascher's deposition.

Dated: September 20, 2023

Respectfully submitted,

HAGENS BERMAN SOBOL SHAPIRO LLP

WINSTON & STRAWN LLP

By: /s/ Steve W. Berman

By: /s/ Jeffrey L. Kessler

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PLS.' RESPONSE TO DEFS.' MOT. FOR LEAVE TO SUBMIT
ADDITIONAL AUTHORITY

Case No. 4:20-cv-03919-CW
010912-11/2333348 V1

ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)

Pursuant to Civil Local Rule 5-1(i)(3), the filer of this document attests that concurrence in the filing of this document has been obtained from the signatories above.

Dated this 20th day of September 2023.

/s/ Steve W. Berman
STEVE W. BERMAN